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# *Oil and Gas Tax Newsletter*

NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER

State Capitol, 600 E. Boulevard Ave., Bismarck, North Dakota 58505-0599

Income & Oil Taxes Division

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## **LEGISLATIVE CHANGES TO THE GROSS PRODUCTION TAX AND OIL EXTRACTION TAX LAWS**

The 1997 Legislative Assembly enacted three bills which change the provisions of the gross production and oil extraction tax laws. **SB 2155** relates to the filing of returns by electronic media and the waiver of the requirement to file producer's reports. **SB 2156** clarifies the time allowed for assessment of gross production and oil extraction tax and the audit of returns. **SB 2371** contains a tax incentive for initial production from wells on tribal trust lands. These changes are described in more detail below.

### ***SB 2155 Filing By Electronic Media and Waiver of Producer Reporting Requirement***

The tax on oil and gas production must be reported each month on forms prescribed by the Office of State Tax Commissioner (Commissioner). Effective August 1, 1997, the Commissioner may require a purchaser to file the monthly report by electronic data interchange or other form of electronic media. This is an effort to eliminate the filing and processing of paper returns and the manual data entry that is required for the enormous amount of information reported. The Commissioner will evaluate the resources and capabilities of individual purchasers to determine the acceptable form of electronic media and the timetable for requiring electronic filing.

Electronic filing is currently offered on a voluntary basis using electronic data interchange (EDI) and utilizing the services of a value added network (VAN). EDI involves the transmission of a file in a nationally approved standard format. The VAN functions as an "electronic post office" to send and receive files transmitted electronically. The Commissioner currently pays for the transmission costs involved in electronic filing. Other applications are currently being evaluated by the Commissioner for use as possible electronic filing options.

Electronic filing provides benefits to both the Commissioner and the taxpayer. Electronic filing involves a computer to computer process and provides for a limited amount of human intervention. This filing procedure results in a decreased number of errors, which eliminates having to file amended returns to make corrections, and also speeds up the entire filing and processing functions. It has been the Commissioner's experience that electronic filing greatly reduces the cost and time involved in processing returns.

Effective August 1, 1997, the Commissioner may also waive the producer's requirement to file a monthly return. This is an additional attempt to reduce the burden of processing paper returns and also to eliminate a duplication of effort on the part of industry in reporting to the Commissioner and the North Dakota Industrial Commission.

Producers will be required to submit a request and sign a waiver before the requirement to file a monthly return will be waived. It is important to note that the waiver to file a monthly return will not release a producer from the responsibility to remit the tax or to maintain records for inspection by the Commissioner. When a waiver has been granted to a producer, their obligation will be tied to the return filed by the purchaser. This will be explained further in the discussion of SB 2156 that follows.

In addition to the oil and gas tax return filed with the Commissioner each month, a production report is required to be filed with the Industrial Commission. This production report details the volumes produced and sold for each well for a production month. The same information is reported on the monthly return filed with the Commissioner. It is the Commissioner's intent to verify sales volumes reported on the purchaser's monthly return with the sales volume information reported by the producer to the Industrial Commission. To verify sales value information the Commissioner intends to request additional pricing information from the purchaser. The

information under consideration includes which posting is being utilized, what deductions from the price are included (i.e., transportation, etc.), what additional adjustments to the price are included (i.e., bonus, quality, etc.), and what the average gravity is determined to be.

It is important to stress that SB 2155 provides that the Commissioner **may** require purchasers to file electronically and **may** waive the producer's requirement to file a return. It will take a significant amount of time to complete the programming and procedural changes that will be necessary to implement SB 2155. When those changes have been completed, the Commissioner will notify producers and purchasers of the requirements for reporting and set a timetable for compliance with the new procedures. Producers must continue to file a return until a waiver is granted and could be subject to a \$25 per day penalty for failure to file if they do not do so.

### ***SB 2156 Time for Assessment or Refund***

SB 2156 clarifies that the time periods for assessment or refund run from the later of the due date of the original return or the date the original return is filed rather than the date an amended return is filed. Although the Commissioner has always interpreted this to mean the original return, there has been some confusion regarding whether the filing of an amended return could extend the date for audit of a return.

The Commissioner also has two years after an amended return is filed to audit that return and assess any additional tax that is due as a result of any corrections or modifications that were made. This two-year period will extend the current three-year time period for audit to address a situation where an amended return is filed late within the period for audit. The purpose is to provide the Commissioner with sufficient time to verify whether the changes on the amended return are in compliance with the law. When an amended return has been filed early within the three-year time period for assessment or refund, those portions of the three-year time period that have not expired at the end of the two-year period for audit of the amended return will not be limited or restricted.

When a producer seeks and is granted a waiver of the requirement to file a monthly return, the producer's tax liability will be tied to the date the purchaser files a return. The Commissioner has three years after the due date of the purchaser's return, or the date it is filed, to assess the producer for additional tax amounts. Although the

purchaser is primarily responsible to remit the tax, the producer and the purchaser are each liable for payment of the tax. If, at any time a producer does not wish to be tied to the time period for audit and assessment based on the date a purchaser files a return, the producer can revoke the request for waiver and file a return.

### ***SB 2371 Tax Incentive***

SB 2371 provides a 60-month oil extraction tax exemption for production from a well drilled and completed on an Indian reservation or on tribal trust land after July 31, 1997. Over the past several years there has been very little drilling activity on Indian reservations and on tribal trust lands. The incentive is designed to encourage exploration and development on these Indian lands in North Dakota.

The initial production from a well is exempt from oil extraction tax for a period of 60-months if:

- The well is located within the boundaries of an Indian reservation;
- The well is drilled and completed on lands held in trust by the United States for an Indian tribe or an individual Indian; or
- The well is drilled and completed on lands held by an Indian tribe, if the interest exists on August 1, 1997.

A well drilled anywhere within the boundaries of an Indian reservation will qualify for the exemption regardless of whether the well is drilled on tribal, trust, or fee land. With regard to lands located outside the boundaries of a reservation, if a well is located on tribal trust lands or allotted land, the exemption will apply. If the well is located on non-trust lands held by a tribe, the exemption will apply as long as the tribal ownership is in existence on August 1, 1997, the effective date of this legislation. Because it is the intent of this legislation to promote development on existing tribal and reservation lands, the exemption will not apply to non-trust lands located outside a reservation which are acquired by a tribe in its governmental capacity after August 1, 1997.

To claim the exemption, the well must be certified as a new well drilled on an Indian reservation or on tribal trust land by the Industrial Commission and a copy of the certification must be filed with the Commissioner. After receiving a copy of the certification, the Commissioner

will send a letter acknowledging the certification and instructing each affected producer and purchaser how to report the exemption. The Commissioner is designating an "FE" well code for reporting exempt production on the oil tax report. This well code will be added to the oil report instruction booklet.

The exempt period begins on the date the well is completed and runs for 60 consecutive months. After the 60-month exempt period expires, production from the well is subject to the 4% reduced tax rate.

### ***OTHER CHANGES TO THE GROSS PRODUCTION AND OIL EXTRACTION TAX LAWS***

Previous legislation had stipulated that beginning July 1, 1997, 10% of oil extraction tax revenues is allocated to the resources trust fund, 20% to education funds, and 70% to the state general fund. HB 1025 amends the previous legislation and the distribution factors will remain at the current percentages; 20% of revenues is allocated to the resources trust fund, 20% to education funds, and 60% to the state general fund.

SB 2071 authorizes the Commissioner to prescribe alternative methods for signing, subscribing, or verifying a return that is filed by electronic means, including telecommunications. These methods will have the same validity and consequence as an actual signature and a written declaration for a paper return.

SB 2366 establishes a permanent oil tax trust fund for the deposit of excess oil extraction and gross production tax revenues which exceed specific amounts in a biennium. Any interest earned on the fund is to be transferred to the state general fund.

### ***HOME PAGE***

The Commissioner has developed a web site at **<http://www.state.nd.us/taxdpt>**. Instructions, forms, publications, and information for several tax types are available for download or they can be requested on-line. Links are available to the State of North Dakota, where other agency links can be found, and to the IRS home pages.

Specific information available from the Oil and Gas Tax Section is as follows:

- Oil and gas tax law and rules.
- Oil and gas historical overview.
- Oil producer's and purchaser's instructions.
- T-11 and T-13 gas instructions.
- Pool code and gas plant code lists.
- T-10, T-11, T-12, and T-13 oil and gas tax forms. (These forms are available in a .PDF format which prints a copy of the form or you can download a file of the forms in Lotus.WK4 spreadsheet format.)

### ***REMINDERS:***

Notification of the gas tax rate for fiscal year 1998 will be issued on June 1, 1997.

To claim an exempt royalty interest, documentation to support a claim must be submitted within ninety days after the first report is filed on a new property.

Producers are encouraged to review production and reporting history and take full advantage of tax incentives by receiving certifications from the Industrial Commission. It is the producer's responsibility to make certain that the Commissioner receives a copy of the certification within the 18-month deadline. It is advisable to phone this office when the 18-month deadline is approaching and a producer is not certain that a certification has been received by the Commissioner.

All credit amendments must be submitted for pre-approval. **No** credits may be applied against a current month's tax liability until approval is given by this office.

Please enter the pool code for each well entry on your oil tax reports. Call Nancy Mund at (701)328-3593 or access the Commissioner's web site to request an updated list of pool codes.

Wellhead BTU must be completed for each well entry on the gas tax reports and a response must also be given to the split stream question.

To verify an API number, well code, or other information relating to an existing well, call Pat Wirta at (701)328-2747. Any oil producer or purchaser filing a report on a particular well for the first time is especially encouraged to contact Pat for information on the well's current tax status.

Please do not send returns by fax, they will not be accepted. The Commissioner will only accept replacement pages by fax, on approval, when an error has been discovered prior to processing a return.

### ***If You Need Assistance***

If you have additional questions about the oil and gas tax requirements, please contact:

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